

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-31082

GLORIA L. BUTLER
a/k/a GLORIA L. AZADA
a/k/a GLORIA L. CRAWFORD

Debtor

PUBLISHED:

In re Butler, 271 B.R. 807 (Bankr. E.D. Tenn. 2001)

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Debtor

**MEMORANDUM ON DEBTOR'S
MOTION TO ALTER OR AMEND**

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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

Before the court is the Motion to Alter or Amend filed by the Debtor on December 17, 2001, asking the court to amend its December 5, 2001 Order overruling her Objection to Trustee's Notice of Intent to Sell Property filed on September 28, 2001. By its December 5, 2001 Order, the court limited the Debtor's homestead exemption under TENN. CODE ANN. § 26-2-301(a) (2000) in her residence at 2325 Sir Edward Lane, Maryville, Tennessee, to her "equity interest in the residence on March 5, 2001, the date she commenced her Chapter 7 case, *i.e.*, the value of the property in excess of the amounts owing Curtis Mortgage Company, Inc. and Joe and Barbara Crawford on their respective first and second mortgages." The Debtor states that the Trustee refuses to remit to her the exempt amount and asks the court to alter or amend its December 5, 2001 Order to direct the Trustee to pay the exempted amount to her.

The court finds no ambiguity in its December 5, 2001 Order.

The Report of Sale¹ filed by the Trustee on October 30, 2001, establishes that the property was sold for \$112,270.00 and that the payoff on the Curtis Mortgage Company, Inc. first mortgage was \$92,802.61. The Stipulations for Homestead Exemption Dispute filed by the parties on October 17, 2001, establishes that the second mortgage held by Joe and Barbara Crawford secured a \$18,077.80 non-interest bearing loan.² The Debtor's equity interest in the property was, therefore, \$1,389.59.

¹ The court takes judicial notice of the Report of Sale. See FED. R. EVID. 201.

² There is nothing in the record to establish that the Debtor satisfied any portion of this obligation prior to bankruptcy.

The Trustee, having failed to object to the Debtor's claimed homestead exemption, cannot now apply the exempt amount to any expenses associated with the sale of the property. *See Taylor v. Freeland & Kronz*, 112 S. Ct. 1644, 1648 (1992). Furthermore, the Debtor's homestead exemption, having been allowed, was no longer property of the estate over which the Trustee could exercise control. *See id.*

Again, the court's December 5, 2001 Order clearly delineates the homestead exemption to which the Debtor is entitled. The Order does not suggest or imply that the expenses associated with the sale of the property are to be paid by the Trustee from the exemption. They are not!

For the above reasons, the Debtor's Motion to Alter or Amend will be denied.

FILED: December 21, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Memorandum on Debtor's Motion to Alter or Amend filed this date, the court directs that the Motion to Alter or Amend filed by the Debtor on December 17, 2001, is DENIED.

SO ORDERED.

ENTER: December 21, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE